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**IN THE
COURT OF APPEALS OF INDIANA**

M.S.,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 49A04-0705-JV-247
)	
STATE OF INDIANA,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Beth Jansen, Magistrate
Cause No. 49D09-0610-JD-3807

November 5, 2007

MEMORANDUM DECISION– NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent M.S. appeals the juvenile court's determination that she committed Battery,¹ a class D felony, and Disorderly Conduct,² a class B misdemeanor, had those offenses been committed by an adult. Specifically, M.S. claims that the adjudications must be set aside because the evidence established that she acted in self-defense. Finding no error, we affirm the judgment of the juvenile court.

FACTS

On October 9, 2006, fifteen-year-old M.S., a student at North Central High School (North Central) in Indianapolis, was sitting in the Dean's office at school next to a fellow student, J.M. At some point, J.M. struck M.S., and M.S. hit her back. The fight continued, and Rex Rymers, North Central's Dean of Students, became aware of the altercation. Dean Rymers intervened and demanded that M.S. and J.M. stop fighting. Dean Rymers then approached the girls, stood behind J.M., grabbed her arms, and attempted to pull her away from M.S. However, M.S. continued fighting, striking Dean Rymers in the head at least three times. Dean Rymers then stepped between the girls with his back to M.S. and moved J.M. away from M.S. M.S. struck Dean Rymers again, hitting him several times in the back of the head. As Dean Rymers continued to restrain J.M., he moved towards an office and tripped over a desk, causing him and J.M. to fall on the floor. At that point, Lashaundra Nathan, another Dean at North Central, grabbed M.S.'s arms and moved her away from Dean Rymers and J.M.

¹ Ind. Code § 35-42-2-1.

² Ind. Code § 35-45-1-3.

As a result of the incident, the State filed a delinquency petition on October 11, 2006, alleging that M.S. committed the offenses of battery and disorderly conduct had they been committed by an adult. Thereafter, M.S. filed a notice of intent to raise the claim of self-defense.

At the denial hearing that commenced on April 12, 2007, M.S. maintained that she was defending herself from the attack by J.M. and that she struck Dean Rymers only because he had placed himself in the middle of the altercation. In entering a true finding against M.S. with respect to both offenses, the juvenile court commented as follows:

I believe that there was a point when [M.S.] did act in self-defense. I believe that she was attacked. That, that evidence is uncontroverted. Someone approached [M.S] and struck [M.S.], and got the first hit in on that. I have no doubts of that. . . . I am not at this time, requiring, in any way, shape or form, essentially, an instantaneous stopping of an action, based upon threats. I do believe that . . . whatever self defense action you had at the beginning of this, it did not continue throughout. I might of [sic] given you perhaps one, one strike or one blow against Mr. Rymers. I might of [sic] given you one. But in reviewing the evidence and the testimony, there were multiple strikes against him. I do believe that at some point he did say something. I do believe it's reasonable to assume that, that someone told you you need to stop fighting. And there wasn't simply just one blow that followed. There were multiple blows that followed, and multiple blows that struck Mr. Rymers. I have also considered the testimony that [J.M.'s] arms were essentially restrained when, when these blows occurred.

Tr. p. 36-37. M.S. now appeals.

DISCUSSION AND DECISION

In addressing M.S.'s claims that the juvenile court's findings must be set aside because the evidence established that she acted in self-defense, we initially observe that Indiana Code section 35-42-2-1 defines class D felony battery in relevant part as a knowing

or intentional rude, insolent, or angry touching “causing bodily injury to a school employee.”

Indiana Code section 35-45-1-3 defines disorderly conduct as “engaging in fighting or in tumultuous conduct.”

With regard to a claim of self-defense, we note that Indiana Code section 35-41-3-2 provides that a person is justified in using reasonable force against another person to protect herself or a third person from what she reasonably believes to be the imminent use of unlawful force. When a defendant raises a claim of self-defense, she is required to show the following: (1) she was in a place where she had a right to be; (2) she did not provoke, instigate, or participate willingly in the violence; and (3) she had a reasonable fear of death or serious bodily harm. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). The reasonableness of a defendant’s belief that she was entitled to act in self-defense must be supported by evidence that the alleged victim was imminently prepared to inflict bodily harm on the defendant. Henson v. State, 786 N.E.2d 274, 278 (Ind. Ct. App. 2003).

When a defendant claims self-defense, the State has the burden of disproving at least one of the elements of self-defense beyond a reasonable doubt. Sanders v. State, 704 N.E.2d 119, 123 (Ind. 1999). The State may satisfy this burden by rebutting the defense directly, by affirmatively showing that the defendant did not act in self-defense, or by simply relying upon the sufficiency of the evidence in its case-in- chief. Id. Moreover, the trier of fact is not precluded from finding that a defendant used unreasonable force simply because the victim was the initial aggressor. Birdsong v. State, 685 N.E.2d 42, 45 (Ind. 1997).

We also note that we review self-defense claims as we would any other sufficiency of

the evidence challenge. Tunstill v. State, 568 N.E.2d 539, 541 (Ind. 1991). Specifically, this court neither reweighs the evidence nor judges the credibility of the witnesses. J.D.P. v. State, 857 N.E.2d 1000, 1010 (Ind. Ct. App. 2006), trans. denied. Rather, we consider only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. Id.

As noted above, the juvenile court determined that M.S. did not initiate the altercation with J.M. and that M.S. acted in self-defense when she initially struck J.M. Tr. p. 36. The court also noted that M.S. would likely have been able to claim self-defense when she accidentally hit Dean Rymers the first time. Id. at 37. However, the trial court observed—and we agree—that M.S. lost her right to claim self-defense when she continued to hit Dean Rymers after he stepped between the girls, restrained J.M., and pulled her away from M.S. Id. at 37. At the denial hearing, Dean Rymers testified that when he saw the girls fighting, he grabbed J.M. by the arms from behind to restrain her. Id. at 8. M.S. struck Dean Rymers in the head at least three times. Id. at 9. The evidence also established that Dean Rymers then turned J.M. around to protect her. At that time, he was standing between the girls with his back to M.S. Id. at 10. However, M.S. continued to hit Dean Rymers in the head. Id.

In our view, it is apparent that the evidence established that as M.S. repeatedly struck Dean Rymers, J.M. no longer posed an immediate threat because Dean Rymers had restrained her, and the girls were no longer even facing each other. Therefore, M.S. cannot

claim that she acted in self-defense when she continued to strike Dean Rymers. Also, Dean Rymers was not attacking M.S., and the evidence did not show that he posed any type of physical threat to her. Hence, we conclude that the evidence was sufficient to support the juvenile court's true findings that M.S. committed the offenses of battery and disorderly conduct had they been committed by an adult.

The judgment of the juvenile court is affirmed.

BAILEY, J., and VAIDIK, J., concur.